

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 1999-415-C-ORDER NO. 2000-0072

JANUARY 19, 2000

IN RE: Application of OptiLink Communications, Incorporated) ORDER
for a Certificate of Public Convenience And Necessity) GRANTING
to Provide Competitive Local and Intrastate IntraLATA) CERTIFICATE
and InterLATA Interexchange Telecommunications)
Services Within The State of South Carolina)

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of OptiLink Communications, Inc. ("OptiLink" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based local exchange service and to provide intrastate intraLATA and interLATA interexchange services throughout the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1998) and the Regulations of the Public Service Commission of South Carolina.

By letter, the Commission's Executive Director instructed OptiLink to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. OptiLink complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A hearing was commenced on January 5, 2000, at 11:00 a.m., in the Commission's Hearing Room. The Honorable Philip T. Bradley, presided. OptiLink was represented by Kevin A. Hall. Jocelyn D. Green, Staff Counsel, represented the Commission Staff.

A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC"). At the hearing on January 5, 2000, a Stipulation entered into by the SCTC and OptiLink was marked for identification and entered into the evidence of the case. In the Stipulation, OptiLink stipulated that it would seek authority only in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until OptiLink provided written notice of its intent prior to the date of the intended service. OptiLink also stipulated that it was not asking the Commission to make a finding at this time regarding State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to OptiLink provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

Doug Atkinson, General Manager for OptiLink, appeared and offered testimony in support of OptiLink's application. As General Manager of OptiLink, Mr. Atkinson is responsible for the day-to-day operations of the Company. The Company plans to offer resold and facilities-based local exchange service in the non-rural areas of South Carolina and intrastate intraLATA and interLATA interexchange services throughout the State of South Carolina. OptiLink is a

Georgia corporation that was incorporated in April 1998. On December 24, 1999, OptiLink was acquired by DURO, a privately-held Delaware corporation with more than 100,000 subscribers.

OptiLink is currently certified to provide telecommunications services in Georgia and Alabama. The Company is currently providing its services in Georgia. The Company is seeking certification in the other southeastern states of the United States. The Company has entered into an interconnection agreement with BellSouth. BellSouth and the underlying carrier will handle technical problems that arise in South Carolina.

The Company is seeking a waiver of 26 S.C. Code Ann. Regs. 103-631 so that it can enter into a contract with the directory publisher of each area in which the Applicant provides local service to include the names of its customers in the appropriate publisher's directory. In addition, the Company seeks a waiver of 26 S.C. Code Ann. Regs. 103-610 so that OptiLink can maintain its records in Georgia. Finally, the Applicant seeks a waiver of the requirements that may require the Company to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The Company requests authorization to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP).

As of the date of the hearing, Mr. Richard Gourley was President of OptiLink. Mr. Atkinson is Vice President of Operations. According to Mr. Atkinson, OptiLink will rely on the financial resources of its new parent company DURO. OptiLink will also market its services through DURO. Marketing tactics include advertising by way of television and radio. The Company will target residential and business customers.

The Company's customer service department is located in Valdosta, Georgia. The Company has a twenty-four hour support line; a live voice is available to assist customers

twenty-four hours a day. Presently, OptiLink handles its own billing for its prepaid services; however, DURO is putting together a billing package from Keenan (a Lucent package). OptiLink's name and customer service telephone number will appear on the bill. Regulatory and financial questions regarding OptiLink should be directed to Mr. Robert Don Bragg. Mr. Atkinson testified that upon certification from this Commission, OptiLink will abide by all the rules and regulations of the South Carolina Public Service Commission.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. OptiLink is organized as a corporation under the laws of the State of Georgia and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.

2. OptiLink wishes to provide local exchange services and interexchange services within the State of South Carolina.

3. The Commission finds that OptiLink possesses the technical, financial, and managerial resources sufficient to provide the service requested.

4. The Commission finds that OptiLink's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1998).

5. The Commission finds that OptiLink will support universally available telephone service at affordable rates.

6. The Commission finds that OptiLink will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by OptiLink "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1998).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to OptiLink to provide competitive intrastate local exchange services only to customers located in non-rural areas of South Carolina. The terms of the Stipulation between OptiLink and the SCTC are approved, and adopted as a portion of this Order. Any proposal to provide local exchange service to a customer in a rural incumbent LEC's service area is not included in the instant grant of authority. Further, the Company is granted authority to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. OptiLink shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters.

3. With regard to the interexchange service offerings of OptiLink, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate

structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. OptiLink shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. OptiLink shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 6, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1998).

5. If it has not already done so by the date of issuance of this Order, OptiLink shall file its revised long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. OptiLink is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. OptiLink shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If OptiLink changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, OptiLink shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 47 CFR 51.209.

10. OptiLink shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

11. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs OptiLink to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also

obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, OptiLink, shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

OptiLink shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

13. OptiLink shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

14. By its Application, OptiLink requested waivers from Commission requirements (1) of publishing a directory, (2) of maintaining its books and records in conformance with the Uniform System of Accounts, and (3) of maintaining its books within the State of South

Carolina. The Commission finds the reasoning behind OptiLink's requests for waivers reasonable and hereby grants the waivers of the regulations requested. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

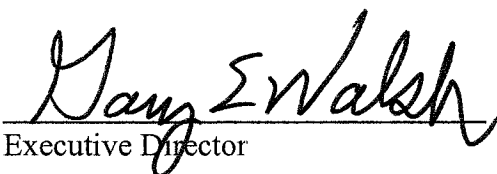
15. OptiLink shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, OptiLink shall keep financial records on an intrastate basis for South Carolina to comply with the annual and gross receipts filings.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:

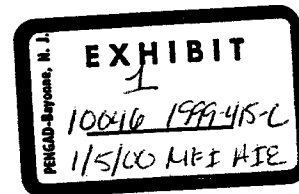

Executive Director

(SEAL)

DEC. 9. 1999 4:08PM NMRS

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 1999-415-C



Order Exhibit 1

Re: Application of OptiLink Communications, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Resold and Facilities-)
Based Local Exchange and Interexchange)
Telecommunications Services in the State)
of South Carolina)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and OptiLink Communications, Inc. ("OptiLink") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, the necessity for SCTC's intervention in this matter is avoided and SCTC withdraws its opposition to OptiLink's Application. SCTC and OptiLink stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to OptiLink, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. OptiLink stipulates and agrees that any Certificate which may be granted will authorize OptiLink to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. OptiLink stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

DEC. 9.1999 4:08PM NTRS

4. OptiLink stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until OptiLink provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, OptiLink acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. OptiLink stipulates and agrees that if OptiLink gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then OptiLink will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. OptiLink acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

DEC. 9. 1999 4:08PM NMRS

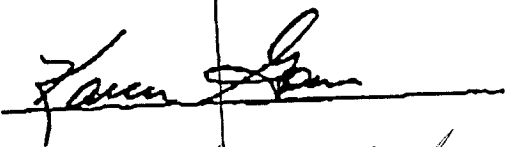
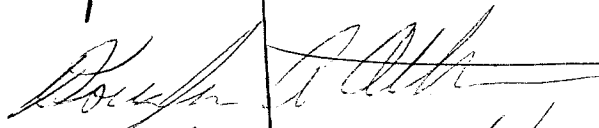
8. OptiLink agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

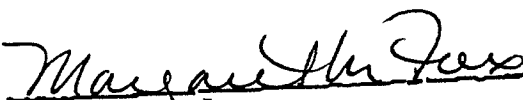
9. OptiLink hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 17th day of December, 1999.

OptiLink Communications, Inc.:

South Carolina Telephone Coalition:



General Manager 1/5/2000


M. John Botch, Jr.
Margaret M. Fox
McNAB LAW FIRM, P.A.
Post Office Box 11390
(803) 799-9800

Attorneys for the South Carolina Telephone Coalition

DEC. 9. 1999 4:08PM NMRS

ATTACHMENT A

South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Hargray Telephone Company, Inc.
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lookhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

**ANNUAL SURVEILLANCE INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S**

COMPANY NAME

FBI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR
12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF
CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING
_____.

* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT
OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS
METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3
ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

AUTHORIZED UTILITY REPRESENTATIVE INFORMATION

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION REGULATION

103-612.2.4(b) - Each utility shall file and maintain with the Commission the name, title, address, and telephone number of the persons who should be contacted in connection with General Management Duties, Customer Relations (Complaints), Engineering Operations, Test and Repairs, and Emergencies during non-office hours.

Company Name (Including dba Name(s) or Acronyms used or to be used in South Carolina)

Business Address

City, State, Zip Code

A.

General Manager Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

B.

Customer Relations (Complaints) Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

C.

Engineering Operations Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

D.

Test and Repair Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

E.

Contact for Emergencies During Non-Office Hours (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

F.

Financial Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

G.

Customer Contact Telephone Number for Company (Toll Free)

This form was completed by

Signature

**If you have any questions, contact the Consumer Services Department (803-896-5230)
or Utilities Department at (803-896-5105).**